IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE V.K.MOHANAN

FRIDAY, THE 7TH SEPTEMBER 2007 / 16TH BHADRA 1929

RFA.No. 119 of 2006()

OS.NO.165/2003 of PRINCIPAL SUB COURT,THALASSERY
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APPELLANT/1ST DEFENDANT:

S. BHAGYA, PROPRIETRESS
MOTHER EARTH ENVIROTECH 240 DHARAPURAM ROAD,
TIRUPUR-641 604, TAMIL NADU.

BY ADV. SRI.M.SASINDRAN
SRI.T.P.ELDHO

RESPONDENTS: PLAINTIFF AND 2ND DEFENDANT:
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1. KANNUR MUNICIPALITY,
KANNUR, REPRESENTED BY ITS SECRETARY,
G. RAJENDRA NAIR, S/O. GOPALAN NAIR,
AGED 50 YEARS.

2. TAMILNADU MERCHANTILE BANK LTD.,
DOOR NO.6 (FIRST FLOOR, CHIKKANNA
CHETTIAR STREET, TIRUPUR-641 604).

R1 BY ADV. SRI.K.K.CHANDRAN PILLAI
SRI.R.V.SATHYAPRIYAN NAIR
R2 BY ADV. SRI.V.V.SURENDRAN
SRI.P.A.HARISH

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON 07/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R.RAMAN & V.K.MOHANAN, JJ.

R.F.A.NO.119 OF 2006

Dated this the 7th day of September, 2007

JUDGMENT

Raman, J.

This is an appeal filed against the order dismissing the counter claim for non-payment of the court fee. Now the suit is already listed for trial. In the affidavit filed by the appellant herein, it is stated in paragraph 5 that when the case was posted on 24/11/2005 for payment of the balance court fee in the counter claim, a petition was filed seeking extension of time, which was granted and the case was posted to 23/12/2005. On 10/12/2005 the appellant along with her husband went to Chennai in connection with the family function and the husband of the appellant fell ill at Chennai and therefore they could not return to Tirupur as scheduled. Though the counsel tried to contact the appellant over telephone, since the appellant was not in station, he could not contact the appellant. Appellant's husband recovered from the illness only on 25/12/2005 and the appellant and family returned to Tirupur only on 26/12/2005. But on 27/12/2005 itself the case was called and the counter claim was dismissed for non-payment of the balance court fee. It is stated that serious prejudice will be caused, in case the appellant is not given an opportunity for remitting the balance

court fee and to contest the matter.

2. We have heard both sides.

3. It is true that reasons as stated in the memorandum of appeal supported by an affidavit are not urged by filing any proper petition before the court below. As such we could not find fault with the court below in not extending the time, in the absence of any application filed seeking further time, on the date of which the case should posted. Even thereafter, the appellant did not chose to file a review stating the reasons which disabled the appellant from appearing and payment of court fee on the date fixed. However, the appellant submits that she is prepared to pay balance court fee within one week from today.

In the facts and circumstances, since the trial was not started and since no material prejudice will be caused to other side by granting time to the appellant for remitting the balance court fee, we direct as follows:

> The appellant shall pay an amount of Rs.500/- Rupees five hundred) to the High Court Legal Services Committee within a period of one week by way of cost. She shall also remit the balance court fee before the court below within one week from today. On the above condition being

satisfied, the order passed by the court below will stand set aside. The trial of the case will stand adjourned for a period of ten days, in case it is posted in the meantime.

Issue emergent copy.

Sd/-
P.R.RAMAN,
Judge.

Sd/-
V.K.MOHANAN,
Judge.

kcv.